ALBERTA LAW REFORM INSTITUTE

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Table of Contents

THE ALBERTA LAW REFORM INSTITUTE 1

History 1
Funding 1
Objectives 2

PERSONNEL OF THE INSTITUTE 3

Board of Directors 3
Counsel 5
Special Counsel 7
Support Staff 7
Summer Students 8

WORKING METHODOLOGY 9

INSTITUTE PUBLICATIONS 12

THE YEAR IN REVIEW 14

Final Reports 14
Towards Reform of the Law Relating to Cohabitation Outside Marriage 14
Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) 19
Limitations 23
The Bulk Sales Act 27
Section 16 of the Matrimonial Property Act 30
Reports for Discussion 32
Enduring Powers of Attorney 32
Research Papers 37
Report on Referees 37

WORK IN PROGRESS 41

Final Reports 41
Creditors Rights 41
Canada Pension Plan Benefits 42
Reports for Discussion 43
Canadian Depository for Securities 43
Mortgage Remedies 43
Land Titles 43
Section 14 of the Interpretation Act 44
Feasibility Studies 44
Special Projects 45
Crown Liability 45

Surrogate Rules 46
Provincial Family Law Legislation 46
Personal Decision Making 46

SIGNIFICANT ISSUES 47

Implementation of Recommendations 47
Institute Financial Planning 48
Relations With Other Law Reform Agencies 48

APPENDIX A - LIST OF BOARD MEMBERS 50

APPENDIX B - RECORD OF LEGISLATION BASED ON INSTITUTE'S RECOMMENDATIONS 56

APPENDIX C - OTHER PUBLICATIONS 64

THE ALBERTA LAW REFORM INSTITUTE

History

In 1968, the Attorney General of Alberta, the Governors of the University of Alberta, and the Law Society of Alberta established the Institute of Law Research and Reform for a period of five years. They did so by an agreement dated November 15, 1967. They have continued the Institute by successive quinquennial renewals of the agreement, the last of which was entered into on March 31, 1988. By unanimous agreement, the new name "Alberta Law Reform Institute" was adopted, effective April 27, 1989.

The Institute's governing body is its Board. The three founding bodies appoint members to that Board. Those members co-opt additional members to the Board. Together with the Governors of the University of Alberta, such members appoint the Institute's Director, who serves as its chief executive officer. The Faculty of Law of the University of Calgary appoints one Board member.

Funding

Funding for the Institute comes from three sources. The University of Alberta provides the Institute with office premises and many additional services. It also makes a fixed annual grant to the Institute. The second source is the Department of the Attorney General, which provides approximately 40% of the balance of the Institute's agreed budget. The third and largest source of funding is the Alberta Law Foundation, which provides approximately 60% of the balance of the Institute's agreed funding.

The Alberta Law Foundation is established by the Legal Profession Act and receives interest on lawyers' mixed trust accounts. One of the statutory purposes to which the money is put is conducting research into and recommending reform of the law and the administration of justice. The Law Foundation grants are made to the Institute for those purposes. The Foundation began to make grants to the Institute on a project basis in 1973, and since 1977 it has made grants towards the Institute's core funding.

Objectives

Clause 2 of the Founding Agreement of the Institute lists the objectives of the Institute as:

(a) to conduct and direct research into law and the administration of justice;

(b) to consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective;

(c) to promote law research and reform;

(d) for the purposes described in subclauses (a) to (c) to work in co-operation with the Faculty of Law of the University of Alberta, the Faculty of Law of the University of Calgary, and with others.

PERSONNEL OF THE INSTITUTE

Board of Directors

The governing body of the Institute is a Board, consisting of certain defined members, being representative of the founding parties, and the Director representing the Institute. These defined members appoint not less than four and no more than seven other members at large.

Board membership has remained relatively unchanged for the year under review. Mr. Harris Wineberg replaced Mr. Clark Dalton as the Attorney General's representative from September onwards while Mr. Dalton was away on a study leave.

The current membership of the Board is as follows:

Alan D. Hunter, Q.C.
Chairman
Senior Partner in the firm of Code Hunter. Appointed by the Law Society of Alberta.

Professor Peter J.M. Lown
Director
Professor of Law, University of Alberta. Appointed Director April 1, 1988 for a term of five years.

W.H. Hurlburt, Q.C.
Nominee of the Attorney General of Alberta.

C. W. Dalton
Director
Legal Research & Analysis
Department of the Attorney General
Nominee of the Attorney General

Harris Wineberg
Acting Director, Legal Research and Analysis
Department of the Attorney General
Nominee of the Attorney General

Professor David P. Jones, Q.C.
Nominee of the Faculty of Law, University of Alberta

Professor Eugene E. Dais
Nominee of the Faculty of Law, University of Calgary

Dr. J.P. Meekison
Vice-President (Academic)
University of Alberta
Nominee of the University of Alberta

J.L. Foster, Q.C.
Senior partner at the firm of Foster Sisson & Warren, Red Deer.

H.J.L. Irwin
Partner in the firm of Corbett & Company.

Madam Justice B.L. Rawlins
Justice of the Court of Queen's Bench, Calgary.

A.C.L. Sims, Q.C.
Chairman, Alberta Labour Relations Board

C.G. Watkins
Charles Gaylord Watkins Professional Corporation

M.B. Bielby, Q.C.
Partner with the firm of Field & Field

The Board meets monthly, generally on the last Thursday of each month, and has a full agenda. During the year in question the Board met in April in Calgary and in June in Red Deer. All other meetings were held in Edmonton, at the Law Centre, with the exception of the September meeting which was held at the Bowker Building, the Departmental offices of the Attorney General.

The Board reviews the overall operations of the Institute by way of standing reports from the Director, as well as approving all reports and the direction of research projects.

The Board has several standing and other committees. The Management and Personnel Committee is comprised of the Chairperson, Director and two other Board members to assist the Director and the Board in the following respects:

1. To consider the Institute's proposed budget, after same have been prepared by the Director, and with a view to advising the Board.

2. Within the salary policies approved by the Board, to approve proposed salaries of the Director and Counsel.

3. To assist the Director on any management or personnel matters arising within the Institute.

4. To perform any other functions delegated to it from time to time by the Board.

The Remuneration Committee consists of the Director and the designates of the President of the University of Alberta, the President of the Law Society and the Attorney General. This committee, from time to time, reviews the needs, resources and capabilities of the Board and shall prescribe, as may from time to time be appropriate, the salary or other remuneration or compensation to be provided to any member of the Board.

The Project Selection Committee currently chaired by Mr. Lyndon Irwin, consists of the Director, one other Board member, the Chairman of the committee and a representative of the counsel staff. Currently the personnel of the committee is: Mr. Irwin, Mr. Watkins and Ms. Shone. This committee has two roles, first to monitor the areas suggested for or in need of reform, and second to review the assignment of project topics.

Most members sit on several committees as well as on the full Board. The workload is a heavy one and the preparation for monthly meetings is significant. Members provide a critical service to the Institute involving time and effort far beyond mere volunteer effort. The work of members, both on the Board and on subcommittees, is an important monitor of and contribution to the quality of Institute work. The Institute is grateful to its members for the commitment which they make and for the contribution which is made to the overall work of the Institute.

Counsel

The Institute has a full time in house staff of six counsel. In addition, the Institute retains a consultant for a specified amount of time per year. Special counsel are retained for their expertise in specified subject or project areas. The Institute also has an arrangement with the Faculty of Law at the University of Alberta so that a Faculty member may be seconded to the Institute for a period of one or two years.

The legal personnel at the Institute are:

Peter J.M. Lown
LL.B. (Honors) Glasgow (1968)
LL.M. Saskatchewan (1973)
Professor of Law, University of Alberta, 1969 to date.
Joined the Institute as Special Counsel in 1987 and appointed Director, April 1st, 1988.
Responsible for a project on Canadian Depository for Securities.

Margaret Shone
LL.B. (Toronto) 1969
LL.M. (Alberta) 1976
Joined the Institute in 1970 after completion of her Masters degree.
The most senior of Institute counsel.
Responsible for projects on Limitations and Dispute Resolution.

Richard H. Bowes
LL.B. (Toronto) 1981
LL.M. (London) 1982
Joined the staff in 1986 after practising in Edmonton with the firm of Field & Field.
Responsible for projects on the Bulk Sales Act and Creditors Remedies.

Brian R. Burrows
LL.B. (Alberta) 1974
LL.M. (London) 1977
Joined the staff in 1987 after extensive practice in Edmonton with the firm of McLennan Ross.
Responsible for a project on Creditors Remedies.

Janice Henderson-Lypkie
LL.B. (Alberta) 1981
Joined the Institute in 1988 after practice in Edmonton with the firm Emery Jamieson.
Responsible for projects on Section 42 of the Business Corporations Act, Section 16 of the Matrimonial Property Act and Mortgages.

Christina Gauk
LL.B. (Alberta) 1974
Ph.D. Candidate (Cambridge)
Joined the Institute in 1988 after private consulting work in Edmonton and doctoral studies at Cambridge.
Responsible for projects on Administrative Procedures, Section 14 of the Interpretation Act and Canada Pension Plan Benefits.

W.H. Hurlburt, Q.C.
LL.B. (Alberta) 1949
Counsel to the firm of Reynolds, Mirth, Richards & Farmer
Former Director of the Institute (1975 to 1986)
Special Consultant to the Institute since 1986.
Responsible for projects on Land Titles and Volunteer Incorporations.

Special Counsel

Professor Gerald B. Robertson
Professor of Law
University of Alberta
Special responsibility for projects on Enduring Powers of Attorney and Decision Making Models.

Professor John M. Law
Associate Professor
University of Alberta
Faculty secondee 1989-1990 with special responsibility for a project on Crown Liability.

Anne de Villars
Partner, de Villars Jones
Special responsibility for a project on Surrogate Rules Review.

Professor D. Christine Davies
Professor of Law
University of Alberta
Formerly the Faculty secondee on a project on Cohabitation, Final Report No. 53, now has special responsibility for revisions of provincial family legislation.

Librarian

Tanya Filanovsky
MLS (Alberta)
Ph.D. (Leningrad, USSR)

Support Staff

The work of the Institute is ably assisted by a small but dedicated support staff. That the volume of work can be handled by such a small staff is a tribute both to their ability and to their functioning as part of an efficient and responsive group.

Carole Worock
Administrator

Shirley Ewmett
Secretary to the Director

Cheryl Robison
Word Processing

Marlene Welton
Library Assistant

Summer Students

Each year the Institute employs several students to assist in research work. Not only is this of benefit to the students themselves but greatly assists in the research work load of the Institute. We are fortunate to obtain top calibre students. Their enthusiasm and freshness of approach is appreciated.

During the summer of 1989 the student researchers were:

Donna Molzan
Patricia Quinton
Claire Klassen

WORKING METHODOLOGY

The initial impetus for a law reform project undertaken by the Institute can come from one of several sources. First, the Institute has undertaken much of its work at the suggestion of the Attorney General and other government departments. Statutes such as the Matrimonial Property Act and the Alberta Business Corporations Act were evolved with the overt encouragement of government. It is essential that a law reform agency be truly "independent" and the Institute's Board makes its own decision as to whether the Institute can and should take on a project. On some occasions projects suggested by government departments have not been taken on for one reason or another. On the whole, however, there has been a solid level of cooperation at an informal level between government departments and the Institute.

A second source of suggestions for law reform projects is the legal profession. Members of the Bar or members of the judiciary regularly make suggestions as to matters which ought to be addressed. The formal bodies connected with the Bar -- the Law Society and the Canadian Bar Association -- also raise suggestions with the Institute.

The Institute endeavours to maintain regular contact with members of the Legislature by sending copies of Reports and Annual Reports to all members of the Legislature and the Cabinet. From time to time suggestions are received from all political parties.

It is open to any person, through the office of the Director, to suggest topics for law reform projects in the province, and from time to time, though less frequently, suggestions are received.

The Institute maintains standing files on all suggestions received for law reform projects. The Project Selection Committee regularly reviews these suggestions and periodically canvasses the community for suggested topics. It also conducts planning reviews of these suggestions as projects are completed and opportunities to take on new law reform work present themselves.

Newsletters and other communications stress the need for members of the profession and the public to keep the Institute informed of problem areas or those which require review. On an internal basis, the committee assigns the preparation of a feasibility study, designed to indicate the nature of the issues, the

methodology involved, and the potential for change. That feasibility study is followed by a budget review of the implications of undertaking the project.

The committee then recommends to the Board whether to accept and to undertake the project. If the recommendation is positive, the project description and associated material form the basis for managing the project through to completion.

The aim of the Project Selection Committee, in addition to ensuring that individual projects are viable and needed, is to create a balanced workload for the Institute as a whole. It does this by ensuring that projects are both topical and do not tend to concentrate in a particular area. Of course, Institute counsel may have a particular expertise which it is best to employ, and there is a possibility that work in one area will suggest several related projects.

It follows that the Institute has not ever had a distinct "programmatic" approach to the selection of law reform projects. It has tended to be pragmatic and to select projects which are thought to raise contemporary and compelling concerns of a relatively discrete nature and where it is thought that the application of the Institute's resources will result in something workable, which will likely gain the acceptance of the Legislature. Inevitably, however, selection of projects has tended to reflect the concerns of the particular period. For instance at one point the Institute was heavily involved in an overhaul of family law in the province; subsequently a number of the commercial law statutes were considered. More recently a sense of concern with respect to the administration of justice, delays in the courts, costs and access has begun to emerge. In short, the Institute in project selection tends to be a mirror of concerns being felt in the real world.

The Board appoints a project subcommittee for each approved project. Usually this committee consists of the Director, the counsel in charge of the project, at least one Board member, and such other persons as may be of significant benefit to the project. The use of such committees provides a sounding board to the counsel, some continuity of management of the project, and an opportunity to fine tune materials before submission to the full Board. This process also allows the Board to operate more efficiently when presented with recommendations from a subcommittee. Over the first year of comprehensive operation of such committees, care has been taken to ensure that advance

preparation does not deprive the Board of the opportunity for full discussion and deliberation. It appears that the appropriate balance between committee and Board has been struck.

The Institute is very much aware of the importance of cooperative law reform ventures, particularly in an age of tight resources. To that end, it cooperates with other law reform agencies in Canada, and the Uniform Law Conference of Canada in various forms of joint projects. The Institute is interested in advancing further the cause of cooperation in law reform ventures in Canada. There is a standing invitation to any law reform agency to propose cooperation with respect to a particular venture.

INSTITUTE PUBLICATIONS

At the time of adoption of a project by the Board, the recommendations of the Project Selection Committee will have identified the parameters of that project, the working methodology which is to be adopted with respect to the project, the likely work output, the resource costs of the project, and the socio-political climate which may lead to adoption of the proposals evolved.

The Institute publishes four kinds of documents. First, sometimes it publishes pure research papers. These are papers where, for one reason or another, in the course of a project, it is thought necessary to do some pure research (whether of a doctrinal or empirical variety) and it is thought useful to disseminate the results of that work for the benefit of other researchers or the legal profession.

A second document is what the Institute terms an Issues Paper. A document of this variety is usually in the early stages of a project. It will outline the nature of the problem which the Institute is considering, broadly what the present law is, and suggest the sorts of issues which the Institute thinks may need to be addressed, and possibly advance some tentative proposals. A document of this character is intended to be very much a preliminary and consultative one and to enable Institute staff and the Board to check whether the Institute has, in the eyes of knowledgeable observers, correctly perceived the problems arising and the sorts of things which need to be addressed. An Issues Paper is not distributed in every project; it entirely depends upon the parameters and circumstances of the particular project.

A third kind of document published by the Institute is a Report for Discussion. This corresponds to what, in some law reform agencies, are called Working Papers. This is a much fuller document than an Issues Paper. It usually outlines with much greater precision the existing law, the issues, the solutions or directions the Institute is proposing, and frequently carries the matter to the stage of draft legislation. The purpose of such a document is again consultative. It is to allow both professional and public input on the Institute's proposals before a Final Report is made.

A fourth category is the Final Report. As a matter of convention, although it is not a requirement, the Institute "reports" through the Department of the Attorney General, to the Attorney General. A Final Report is the position

taken by the Institute after all due deliberation, and almost invariably includes suggested legislation.

All four categories of documents are widely distributed. Approximately 2,500 copies are printed. Distribution is broadly as follows: all government department, all members of the Legislature and Cabinet, all members of the Judicial ranks, all legal firms in the province, all law libraries in the province, all law reform agencies in the British Commonwealth, a large number of other selected Canadian depositories, and approximately 400 law libraries in the western world. It is open to any individual member of the profession to request that that person's name be put on the Institute's mailing list. Copies are distributed free of charge.

Each report contains an Executive Summary, and copies of this Executive Summary are mailed to each individual member of the practising bar in the province, and to those individuals whose interest has been identified during the course of the project. As many as 7,000 copies of the Executive Summary may be distributed.

THE YEAR IN REVIEW

During the year in question the Institute issued five final Reports, one Report for Discussion and one Research Paper. The details of the reports are as follows:

Final Reports

1. **Towards Reform of the Law Relating to Cohabitation Outside Marriage** (Final Report No. 53, June 1989)

The Need for New Legislation

More Canadians than ever before are living together in relationships outside marriage. Alberta and British Columbia have the highest proportion of cohabitation arrangements in the country, according to the most recent census data available.

Despite the fact that cohabitation carries, at least potentially, many of the same responsibilities as marriage, only a handful of statutes include provisions for non-marital cohabitants.

In light of this, the Board of the Alberta Law Reform Institute felt it was time to review the law as it related to cohabitants.

After commissioning a survey of the prevalence of cohabitation in Alberta and a review of attitudes about some of the legal issues involved, the Institute concluded that, in several areas, present law provides inadequate protection for the interests of cohabitants.

Should the Institute recommend that the law recognize cohabitation as the equivalent of marriage? The argument in favour of such assimilation is that cohabitants are often in the same circumstances as spouses, in terms of financial dependence, child care obligations, or bereavement.

However, the arguments against equating the two are also compelling:

(a) To do so may undermine the status of marriage, and lead to more transient relationships.

(b) It seems wrong in principle to impose on people a status they have chosen to avoid.

The Institute concluded that the best approach was to consider separately each statute affecting cohabitants, recommending only those reforms needed to cure inequities and situations of hardship. Cohabitants would not be considered married before the law, but *where necessary*, would be given the rights and obligations of married persons.

Report No. 53, *Towards Reform of the Law Relating to Cohabitation Outside Marriage*, contains 20 recommendations, including changes to the law affecting support and maintenance, property, domestic contracts, intestate succession, social allowance, insurance, and the Fatal Accidents Act. The recommendations on domestic contracts also affect the use of domestic contracts by married persons.

The Definition of Cohabitation

For most purposes, the cohabitation relationship is defined in these recommendations as one between a man and a woman who are living together on a *bona fide* domestic basis, but who are not married to one another.

For the purposes of the Fatal Accidents Act, the Workers' Compensation Act, and the Employment Pensions Act, the Institute recommends that the definition of a cohabitant be a person of the opposite sex who lived with that other person for the three years immediately preceding the relevant time and was, during that period, held out by that person in the community in which they lived as his consort.

Support and Maintenance

Present Alberta law makes no provision for the payment of maintenance and support between cohabitants. After reviewing several submissions on this topic, the majority of the Board favoured provision of a court order for maintenance of one cohabitant by another, under certain limited circumstances:

(a) The applicant has responsibility for the care of the young child or children of the relationship and is unable to support himself or herself for this reason; or

(b) The earning capacity of the applicant has been adversely affected by the relationship and the applicant requires transitional maintenance to re-adjust his or her life.

In determining whether to make a maintenance order, the court would take into account many of the same factors a court considers in making an order for spousal support under the Divorce Act. An order for support of a cohabitant will automatically terminate if that cohabitant marries or enters a subsequent cohabitation relationship.

Property Rights

As with other provinces, the matrimonial property statutes do not extend to cohabitants, although contributions of money or work may lead to an interest in the property.

The majority of the Board recommends that there be no change in the law relating to allocation of title. Such a change would be at odds with the Board's position that the law should recognize differences between marriage and cohabitation.

The majority does recommend, however, that a partner with responsibility for child care should be able to claim temporary possession of the family home. In this circumstance, the needs of young children who might be traumatized by having to leave familiar surroundings is taken into account.

Domestic Contracts

In Alberta, there is now no legislation allowing domestic contracts between spouses or between cohabitants, although such legislation exists in several other provinces.

Domestic contracts offer some certainty to the parties by allowing previous agreement on how property division and other matters would be handled if the relationship ended. The Institute recommends that new statutory provisions be enacted providing for domestic contracts, similar to the laws in place in several other provinces.

The majority recommends that, to be enforceable, the contracts need only be in writing, while the minority felt they should meet the more stringent provisions of Section 37 of the Matrimonial Property Act.

Intestate Succession

The intestacy rules, which direct how the estate of a person who dies without a will is divided, now have no provisions for cohabitants. The Board felt that to include the cohabitant was in the spirit of the intestacy rules. Persons living in cohabitation relationships often see themselves, and are seen by others, as members of the immediate family of a deceased partner. The failure of people who live together to provide for their partners by making a will is often simply a matter of misunderstanding, ignorance of the law, or procrastination.

The Institute recommends that the Intestate Succession Act of Alberta be amended to include a cohabitant among those entitled to inherit in the absence of a will. Specifically, if there are children of another relationship or a surviving spouse, the cohabitant would have to have been living with the deceased for at least two years before death to be entitled to the spouse's share. Otherwise, the Institute recommends that a cohabitant should have the same entitlement as a spouse would have, if they were living together at the time of death.

Social Allowance

Regulations passed under the Social Development Act of Alberta require social workers to review the resources, not just of a person receiving social allowance, but also those of another person cohabiting with him or her. If the partner is employed, or has financial resources, the recipient may lose welfare benefits, in the expectation that the partner will provide maintenance.

According to an empirical study commissioned by the Institute, cohabitants have greater financial independence from each other than is the case with married couples, so the fact that an employed person is living with a welfare recipient does not mean the recipient is not in need.

The Board feels that a person's financial needs should determine his or her eligibility for welfare. Accordingly, it recommends that the resources of a cohabitant should be exempt from consideration *unless* that person is making an economic contribution to the recipient (or applicant) or the recipient's child or children.

If someone is living with a welfare recipient and making an economic contribution to the household, his or her resources should be exempt *unless* the relationship is of a social and familial nature. In determining whether a person should be exempt for the purpose of the Act, sexual factors should not be investigated or considered.

The Board also noted that it finds the present investigative guidelines to social workers intrusive and demeaning, and recommended that these guidelines be deleted from the Department of Social Services' policy manual.

Insurance

The Institute recommends changes to the Insurance Act of Alberta affecting the payment of death benefits. Currently, a "common law" spouse can only claim the death benefit if there is no surviving spouse, while a spouse can only claim if he or she was a member of the deceased's household at the time of death. A common law spouse is defined as one who cohabited with the deceased as his spouse and was known as such in the community, for five years immediately preceding the deceased's death or for two years if there is a child of the relationship.

The Institute recommends that where there is no eligible spouse (i.e. no legal spouse living with the deceased at the time of death) then a common law spouse who was a member of the household should receive the death benefit.

Fatal Accidents Act

The Fatal Accidents Act of Alberta permits a defined list of relatives who may sue in respect of a loss incurred by them as a result of the death. Recovery is restricted to the claimant's loss of reasonable expectation of pecuniary benefit. A more limited list of relatives may also sue to recover damages for bereavement. A spouse is included on both lists; a cohabitant is included on neither.

The purpose of the *Fatal Accidents Act* is to provide compensation to a family that has suffered economic loss as a result of the death of one of its members. The Board took the view that a cohabitant can be as much a part of a family unit as a legal spouse and consequently as much in need of compensation.

The Institute recommends that the cohabitant be included within the list of specified relatives entitled to claim damages for loss of expectation of pecuniary benefit and also within the list of those entitled to damages for bereavement.

Conclusion

In making the 20 recommendations that make up the report, the Institute has sought to rationalize existing statutes and to cure inequities that now exist, rather than to create a special status for non-married couples or to give them the same status as married persons.

2. **Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta)**
(Final Report No. 54, August 1989)

Introduction

Since its enactment in 1981, both practitioners and lenders have had difficulties with Section 42 of the Alberta Business Corporations Act (ABCA). Section 42 was intended to protect shareholders and creditors by preventing the directors of corporations from using corporate funds for personal profit. To accomplish this, Section 42 prohibits a corporation from giving financial assistance to its shareholders or directors or those of its affiliates, or to the associates of such persons, when the corporation cannot satisfy the two-part solvency test set out therein. Section 42 also prohibits financial assistance by a corporation in the purchase of its shares or those of an affiliate, again when it cannot satisfy the two-part solvency test.

Major complaints arose from the unusual two-part solvency test and the failure of Section 42 to differentiate between distributing and non-distributing corporations. Directors and their advisors had difficulty determining whether the corporation could satisfy the two-part solvency test. In addition, while most of the financial assistance prohibited in Section 42 harms the corporation granting it, there are some situations where giving financial assistance is of benefit to the

corporation and in its interest. Section 42 prevented corporations in these instances from using proper financing arrangements necessary for their survival. In August 1987, the Institute issued its *Report for Discussion No. 5* analyzing the practical problems raised by Section 42. In that report the Institute proposed the enactment of a new section that would specifically address these problems.

In this report, the Institute questioned whether the stated purposes of Section 42 could be achieved by other means. It concluded that most of the intended protection for shareholders and creditors already exists in the personal and derivative actions and remedies in the ABCA, and in trust law and the law of fraudulent conveyance and fraudulent preference. The Institute recommends that Section 42 be repealed after minor modifications are made to the ABCA. It further recommends that financial assistance by a distributing corporation in the purchase of its shares be regulated under Alberta's securities legislation.

The Analysis

The Institute tested whether Section 42 could be repealed by examining the personal oppression remedies in the ABCA, the derivative action and its procedures, and the relevant cases. It then reviewed the law of fraudulent conveyance and fraudulent preference. Finally, it tested its conclusions using common fact situations. In the process the Institute examined the potential liability of the party receiving financial assistance, directors who support the giving of financial assistance, and third-party lenders.

(a) Actions and Remedies Available

If Section 42 were repealed, shareholders and creditors would continue to have remedies against directors who authorize financial assistance that is not in the corporation's interest. Shareholders and creditors will have no remedy where the financial assistance is in the interest of the corporation, such as when it is necessary to ensure the survival of the corporation.

(i) Derivative Actions

When the directors of a corporation approve giving financial assistance which is not in the interest of the corporation, they breach their fiduciary duty to the corporation. The corporation, therefore, has a cause of action against the directors. To protect the corporation, the ABCA allows "complainants" to bring a

derivative action on behalf of the corporation against the directors for breach of fiduciary duty. "Complainants" include shareholders and such other persons as the courts decide are proper persons to bring an action on behalf of the corporation. Shareholders, therefore, have an express right to seek leave to bring a derivative action on behalf of the corporation against the directors for breach of fiduciary duty.

Creditors are not expressly listed as complainants in the ABCA but might be included in the general category of "proper person". In *First Edmonton Place Limited* v. *315888 Alberta Ltd. and Majeski* (1987) 54 Alta. L.R. (2d) 289 (Q.B.), Justice McDonald concluded that to be a complainant who can bring a derivative action, the creditor must prove himself to be a person who could be reasonably entrusted with the responsibility of advancing the interests of the corporation. Once he has established his status as a complainant, the creditor, like the shareholder, can then seek leave from the court to bring an action on behalf of the corporation against the directors for breach of their fiduciary duties. The Institute agrees with this conclusion and recommends, should the *First Edmonton Place Ltd.* decision be overturned, that the ABCA be amended to expressly include a creditor as a complainant capable of bringing a derivative action (*but not a personal oppression action*).

(ii) Personal Actions

In many situations now prohibited by section 42, the giving of financial assistance is oppressive or unfairly prejudicial of the shareholders. The shareholders have a personal action against the corporation under section 234 of the ABCA to remedy oppressive or unfairly prejudicial treatment. The oppression remedy is of little use to creditors who will be limited to the more procedurally difficult derivative action on behalf of the corporation. In some very limited situations creditors can also use the law of fraudulent preference and fraudulent conveyance.

(b) Liability of Lenders

Repealing Section 42 would improve the position of lenders but would not eliminate their liability in all financial assistance situations. Repeal would remove the present impediments to debt restructuring within a corporate group. Such restructuring would become possible where it is in the corporation's interest to give financial assistance to the corporate group. However, lenders must

differentiate between the interest of the corporation giving the security and the interest of the corporate group. Often these interests are the same; occasionally they differ. Where the lender knows that the financial assistance is of no benefit to the corporation granting it, the lender will be liable as a constructive trustee for the proceeds collected by the lender upon enforcement of the security given contrary to the interests of the corporation. Shareholders and creditors could obtain leave to bring a derivative action on behalf of the corporation against the lender.

(c) Disclosure

If they are to act, complainants must know that financial assistance has been given by the corporation contrary to its interest. The Institute recommends that the ABCA compel non-distributing corporations to give notice within 90 days to all shareholders of a grant of financial assistance to its shareholders or directors or those of its affiliates, or their associates. The report further recommends that Section 149 of the ABCA be amended to compel distributing corporations to make full disclosure of financial assistance to directors and shareholders. Because creditors can learn of financial assistance from public registries, or can compel such information from the debtor corporation before giving credit, the Institute did not think it necessary to require notice to creditors by either distributing or non-distributing corporations.

Financial Assistance by a Distributing Corporation in the Purchase of Its Shares

The Institute concluded that financial assistance by a distributing corporation in the purchase of its shares, or the shares of an affiliate, should be regulated under securities legislation. Such financial assistance most often arises in takeover situations, which are better supervised by securities specialists than by shareholders or creditors. However, until the necessary regulations are in place, Section 42(1)(c) must remain in force.

Recommendations

The Institute recommends that Section 42 be repealed in conjunction with:

(a) the incorporation into Section 149 of the disclosure requirements now in Section 42(4);

(b) a requirement that non-distributing corporations give notice within 90 days to all shareholders of financial assistance to shareholders and directors of the corporation and its affiliates or to their associates;

(c) the amendment of Alberta's securities legislation to regulate the giving of improper financial assistance by a distributing corporation in the purchase of its shares; and

(d) if the decision in *First Edmonton Place Limited* v. *315888 Alberta Ltd. and Majeski* is overturned, the amendment of Section 231 to include a creditor as a complainant capable of bringing a derivative action on behalf of the corporation.

3. **Limitations**
(Final Report No. 55, December 1989)

Background

The purpose of limitations law is to encourage the timely resolution of legal controversies, and in so doing to strike a proper balance between the interests of potential claimants, potential defendants and society at large.

Limitations law has been growing piecemeal for over three and a half centuries. During this time, the basic approach to limitations law has remained unchanged. There has, however, been substantial change in the characteristics of society and consequential enlargement of legal rights and remedies. As a result of this change and enlargement, limitations law has become unduly technical and complex. It is badly in need of rethinking, of rationalization.

A New Approach

The Institute has formed recommendations for a new, rational, unified approach to general limitations law. In so doing, it has taken the strong points of each of two separate strategies at work under the existing law: the limitations strategy at law - the predominant strategy under the existing law in which Alberta limitations law is firmly rooted - and the limitations strategy in equity.

The new approach continues the direction of the reform movement currently evident in judicial and statutory reforms.

Basic Principles

The recommendations are founded on two basic principles.

The first basic principle is knowledge. It is derived from the limitations strategy in equity and serves the interests of claimants. The principle of knowledge involves building in discovery by the claimant to set the limitations clock ticking. The limitation period does not begin to run until the claimant knows of the claim, that is, until he has "discovered" or "ought to have discovered" (i) that the injury had occurred, (ii) that it was to some degree attributable to the conduct of the defendant, and (iii) that it was sufficiently serious to have warranted commencing a proceeding. After discovery, the claimant has 2 years within which to seek redress in a civil judicial proceeding. This 2-year period constitutes the "discovery limitation period".

The second basic principle is repose. It incorporates the certainty of the fixed periods used in the limitations strategy at law, and serves the interests of defendants by providing an absolute cut off date of 15 years within which the claimant must seek a remedial order. The 15-year period applies irrespective of whether the claimant has knowledge of the claim. The principle of repose facilitates long term planning by persons subject to potential claims. As well, at a certain stage evidence and adjudication becomes defective because of the passage of time. This 15-year period constitutes the "ultimate limitation period".

The defendant is entitled to a limitations defence when either the discovery limitation period or the ultimate limitation period expires, whichever occurs first. The defence must be pleaded, as the traditional approach in the limitations strategy at law currently requires. A successful defence gives the defendant immunity from liability under the claim. Immunity from liability is not conferred automatically and a successful limitations defence does not expunge legal rights.

Together, in the context of the scheme proposed, these dual principles - knowledge and repose - provide a fair balance between the interests of claimants and defendants, both individually and collectively, and satisfy the interests of society at large.

Special Circumstances

Special provisions modify the operation of the basic limitation periods in certain circumstances. For example, both the discovery limitation period and the ultimate limitation period are suspended during any period of time that the claimant was under disability. "Person under disability" is defined to mean either a minor, or an adult who is unable to make reasonable judgments in respect of matters relating to the claim.

The ultimate limitation period is suspended during any period of time that the defendant fraudulently concealed the fact that the injury had occurred. In the case of a claim or any number of claims based on any number of breaches of duty, resulting from a continuing course of conduct or a series of related acts or omissions, the ultimate period begins to run when, *and not before*, the conduct terminated or the last act or omission occurred. Special provisions also apply to claims added to a proceeding, an agreement between the claimant and defendant, and acknowledgment or part payment by the defendant of a claim for the recovery of an accrued liquidated pecuniary sum.

One member of the Board argued strenuously for the retention of an equitable approach to claims for the wrongful retention or conversion of trust property by a trustee. However, after much discussion and careful consideration, the majority of the Board concluded that claims at law and in equity should be subject to the same general principles that underlie the new Act.

Scope of Recommendations

The recommendations are for a general limitations scheme. If adopted, the new scheme will apply generally to all claims coming within the scope of the general limitations scheme, regardless of whether the claim originated at law or in equity. That is to say, all claims subject to the Act are governed by the same two concurrent limitation periods except where special provisions modify their effect.

The key to the new system is what it covers. Although it is generally comprehensive in its coverage, the scheme does not embody the entire limitations system. One must go to the definitions of "claim" and "remedial order" to get to unlock the door to our tight and precise approach.

A "claim" is defined as a matter giving rise to a civil proceeding in which a claimant seeks a "remedial order".

A "remedial order" is defined as a judgment or an order made by a court in a civil proceeding requiring a defendant to comply with a duty or to pay damages for the violation of a right. The definition expressly excludes declarations, orders for the enforcement of a remedial order, judicial review of the exercise of powers conferred on administrative bodies by statute, and *habeas corpus*. Declarations are excluded because they merely define and recognize existing rights. It should be recognized, however, that declarations represent a growth area in law. Their exclusion from the operation of the general limitations scheme leaves room for creative play by lawyers and courts.

Limitation provisions in specialized statutes dealing with particular types of claim are also excluded, as is a remedial order based on adverse possession of real property owned by the Crown.

Possessory remedies, including adverse possession of land owned by persons other than the Crown, are included.

Proposed Model Limitations Act

The report translates the recommendations into a Model Limitations Act. The Act is, we think, logically organized and written in language which is both plain and legally accurate. The Model Act contains 12 sections in 8 pages in this report, a reduction from the 61 sections in 21 pages in the current Act.

Because the Model Act adopts a new approach it adopts a new terminology. The words are used in a generic, non-technical sense. The Act speaks of a "claim" (rather than a cause of action) to denote the substantive right that may entitle a person to receive a remedy in a civil proceeding before a court, of a "claimant" (rather than a plaintiff or applicant) who seeks a "remedial order" in respect of a "claim", and of a "defendant" (which may include a third party) as the person against whom a remedial order is sought.

Because the approach is new, upon its introduction into force the Act will require lawyers and judges to grapple with its scope and specific applications. Definitive answers to questions about the application of the Act to given fact situations will not always be possible. Until issues regarding interpretation are

settled, the Act will provide lawyers with a unique and challenging opportunity to present creative arguments based on principle.

4. **The Bulk Sales Act**
(Final Report No. 56, January 1990)

The Need for Reform

The Bulk Sales Act is intended to protect the trade creditors of retailers and manufacturers who sell their stock without first paying their debts. This protection is achieved by imposing certain duties on the purchaser of the stock. If the purchaser does not fulfil these duties, the sale is voidable at the request of the seller's creditors, which means that the purchaser can lose all that he paid for.

The Act has been much criticized over the years. Many critics suggest that the best remedy for the difficulties caused by the Act is to repeal it. British Columbia repealed its Act in 1985, and law reform agencies in Manitoba and the United States have recommended repeal of bulk sales legislation. In the fall of 1988, this Institute decided it was timely to consider whether Alberta's own Act had outlived its usefulness. An informal survey of Alberta lawyers confirmed our view that it was time to look more closely at the continued need for bulk sales legislation.

History

Bulk sales legislation was first enacted in the 1890's in America. Wholesalers who sold goods on credit to retail merchants complained of a fraudulent practice that was apparently becoming common. A merchant could sell his entire stock of goods to a third party for cash and disappear, leaving his creditors unpaid. Creditors wanted a way to attack such "bulk sales" that did not require proof of the buyer's knowing participation in a scheme to defraud the seller's creditors. The buyer had to be placed under a positive duty toward the seller's creditors. Legislation to accomplish this result was passed by state legislatures at the turn of the century. Canadian creditors wanted similar protection, and Alberta passed its first Bulk Sales Act in 1913.

Bulk sales legislation in different jurisdictions shares two characteristics. First, it makes it more difficult for the owners of certain kinds of business to suddenly sell tangible business assets and disappear with the proceeds without paying creditors. Second, it achieves this object by invalidating the title of the bulk sale purchaser as against the seller's creditors unless certain steps are taken before the sale takes place.

In most U.S. states, the buyer must merely ensure that the seller's creditors receive advance notice of the sale. In all Canadian provinces with bulk sales legislation, the buyer has a heavier duty. The buyer must either satisfy himself that the seller's debts have all been paid, or take steps to ensure that the proceeds are distributed among the creditors, rather than pocketed by the seller.

Alberta's Bulk Sales Act

The Act applies to bulk sales by retail merchants and manufacturers. A sale can only be a bulk sale if at least part of its subject matter is "stock," which includes goods that are ordinarily bought and sold, and the equipment and trade fixtures ordinarily used in connection with a business. The Act applies if the sale is out of the usual course of the seller's business, or if the subject matter of the sale is substantially the entire stock of the seller.

Although both parties to a transaction must comply with the Act's requirements, it is the buyer who suffers the results of non-compliance. The seller provides the buyer with a list of debts owed to trade creditors, verified by statutory declaration; the buyer can rely on a declaration that is correct in form, unless he has actual knowledge that it is false. The seller must then discharge the creditors' claims, or provide the buyer with their waivers or consents.

Often, the parties breach the Act, because strict compliance is expensive in money and time. Non-compliance makes the sale voidable at the instance of the creditors: they can take the property from the buyer, even if he acted in good faith, and even if they have already received all of the purchase price.

Reasons for Repealing the Bulk Sales Act

The Act does more harm than good. There are undoubtedly some creditors who do receive payments because of the Act. The parties to a bulk sale may comply with the Act when the seller would otherwise have disappeared with or

squandered the proceeds. Or the creditor may sue or threaten to sue a buyer where the Act has not been complied with. But logic and the available evidence suggest that the Act's protection for unsecured creditors is marginal at best, and is purchased at a substantial cost in time and money. This cost is borne by the participants in commercial transactions that rarely represent a danger to creditors of the sellers.

The experience in British Columbia indicates that repeal of the Act in that jurisdiction had little impact on debtors, creditors, suppliers, or the insolvency area in general. This may be because the circumstances in which businesses operate have changed greatly since bulk sales legislation was first enacted, decreasing the utility it may have had. Potential creditors can now get effective security on inventory. It is easy for a creditor to obtain a credit history of any established business from a credit reporting agency.In addition to changed circumstances, the Act's inherent limitations are also reasons why the Act does more harm than good. Unsecured creditors of businesses are much more likely to be done in by the swoop of the secured creditor than by a fraudulent bulk sale. The Act does a poor job of protecting creditors from a fraudulent bulk sale, because a rogue can short-circuit the Act simply by swearing a false declaration.

Conclusion

The Institute recommends that the Bulk Sales Act be repealed. The Institute considered the alternative of improving the Act, but found that the Act would still do more harm than good. The Institute's final report includes three appendices containing the full text of the Act, a description of the survey of Alberta lawyers, and approaches that could be taken to reforming, rather than repealing, the Act.

5. **Section 16 of the Matrimonial Property Act**
(Final Report No. 57, March 1990)

Introduction

The Institute undertook a review of Section 16 of the *Matrimonial Property Act* because of the many criticisms of the section voiced by lawyers who practice matrimonial property law. Section 16 provides:

> 16. Notwithstanding the *Survival of Actions Act*, the rights conferred on a person by this Part do not survive the death of the person for the benefit of his estate.

The result is that there can be no division of matrimonial property under the Act if the plaintiff dies before completion of the action. This section reflects the policy that matrimonial property should be available for the benefit of the surviving spouse.

The Need for Reform

Section 16 causes several problems in practice. Of most concern is the unfortunate result that the health of the plaintiff materially affects the conduct of a matrimonial property action. When the plaintiff in a matrimonial property action is seriously ill, the defendant may delay the action in the morbid hope that the plaintiff will die before completion of the action. A survey of members of the Alberta bar showed that many lawyers had experienced delay in such circumstances.

The report examines existing legal avenues that can be used, with varying degrees of success, to minimize delay or remove the incentive for delay, including using the Alberta Rules of Court effectively, severing joint tenancies, and seeking a declaration of resulting trusts and constructive trusts. A review of the strengths and weaknesses of each legal avenue reveals that they are inadequate to deal with the problems occasioned by section 16. In many situations, the present law builds in an incentive for a defendant in a matrimonial property action to delay when the plaintiff is seriously ill.

Recommendations

The problem of delay can be solved in one of two ways. Section 16 could be repealed entirely and replaced with a section that would allow the cause of action to survive for the benefit of the estate of the deceased spouse. Then an estate could commence a matrimonial property action after the death of the spouse or could continue a matrimonial property action commenced before death. Alternatively, section 16 could be amended to allow an estate to continue an action already commenced by the deceased spouse. However, the estate would be

unable to commence an action. The Institute is attracted by the second solution because it overcomes the problem of delay without materially changing the nature of the matrimonial property regime now in existence.

The Institute recommends that the an estate be allowed to continue a matrimonial property action commenced by a deceased spouse. This is a deviation from the original policy that matrimonial property be available in all situations for the benefit of the surviving spouse. However, it can be justified on three bases. First, it is necessary to solve the problem of delay. Second, the decision to commence the action remains with the spouses of the marriage. Third, the division of property lies within the discretion of the Court subject to the presumption of equal division.

The *Matrimonial Property Act* provides that in most cases the court distribute the property acquired over the course of the marriage equally between the spouses. Division will be unequal only when the Court considers that it is not fair and equitable to divide the property equally after considering the factors in section 8 of the Act. If death of a spouse was a factor enumerated in section 8, the court could justify unequal division of matrimonial property in favour of the surviving spouse. The defendant would still gain if the plaintiff died before completion of the action. This would create an incentive for the defendant to delay a matrimonial property action. Therefore, the Institute recommends that death of a spouse should *not* be an enumerated factor in section 8. For this same reason and others enumerated in the Report, the Institute believes that the death of a spouse should not be seen as a "fact or circumstance that is relevant" under 8(m).

Reports for Discussion

Enduring Powers of Attorney
(Report for Discussion No. 7, February 1990)

The Need for Reform

The loss of capacity to manage their own affairs is a fact of life for a growing number of Albertans. Chronic and degenerative illnesses are becoming common. In many cases, such as Alzheimer's disease, the onset of incapacity may be gradual. The sufferer, while still competent, realizes that incapacity is likely or

even imminent. Many people faced with this situation would welcome the opportunity to plan for the future management of their affairs.

Often, people who realize that their mental faculties are beginning to fail would like to grant a power of attorney to a family member or trusted advisor, expecting that the attorney will manage their financial affairs when they are mentally incapable of doing so themselves. A power of attorney is a form of agency, by which one person (the donor) authorizes another (the attorney) to act on his or her behalf.

However, presently the law in Alberta does not allow this to be done. At common law a power of attorney terminates on the mental incapacity of the donor. (The only exception is an irrevocable power of attorney, which is given to secure a proprietary interest of the attorney.) The rule applies no matter how clearly the donor indicates the intention that the power of attorney should continue despite his or her incapacity. Family members may choose to manage the estate notwithstanding they lack lawful authority. In doing so, they expose themselves to potential personal liability. Agents who act after their authority has been terminated by the principal's mental incapacity are personally liable to third parties, even if the agent is unaware of the principal's incapacity. (The authority for this is the 1910 English Court of Appeal case, Yonge v. Toynbee.)

The Report concludes that the common law rule is unsatisfactory and that legislation should be introduced to provide for powers of attorney which endure notwithstanding the incapacity of the donor ("enduring powers of attorney" (EPAs)). The Report's 43 recommendations address the safeguards required, the powers and duties of the attorney, the commencement and termination of enduring powers of attorney, and the protection of attorneys and third parties. A draft Power of Attorney Act and a draft Dependent Adults Amendment Act are included.

Most provinces and many other countries have enduring power of attorney legislation. Research for the Report focused on the relevant legislation in other jurisdictions and on the reports and working papers of other law reform agencies. The Institute also consulted with individuals and organizations in other jurisdictions, in order to benefit from their experience with EPA legislation.

Advantages of Enduring Powers of Attorney

EPAs provide a simple, straightforward means of enabling people to plan for their own incapacity. Granting a power of attorney seems ideal for the person who anticipates becoming unable to manage his or her own affairs. It is illogical and unacceptable that the law revokes the attorney's authority at the very point when it is most needed. An EPA enables people to plan for their own incapacity, giving them a sense of control which promotes autonomy and enhances personal dignity.

Alternatives which are presently available in Alberta are limited or undesirable. For instance, the Dependent Adults Act is a model for reform in the areas of guardianship and trusteeship, but it has disadvantages as a substitute for EPA legislation. The proceedings can be expensive and time consuming, and are often traumatic for the family and the person whose mental faculties are deteriorating, because he or she must be declared "incapable of making reasonable judgments".

Safeguards

EPAs do present an obvious potential for abuse. They can give attorney unlimited power over the donor's estate after the donor's incapacity. Experience in other jurisdictions indicates that the greatest concern is the danger of donors executing EPAs without fully understanding the implications of what they are doing. The problem most often is that the donor is uninformed, rather than mentally incompetent.

Effective safeguards are required, but they must avoid excessive formality and complexity which would result in EPAs being rarely used, or in inadvertent noncompliance when they are used. EPA safeguards must provide sufficient evidence that an EPA has been granted. They must protect the donor against fraud and undue influence, and they must ensure that donors understand the implications of the EPA. The legislation must also provide some mechanism for reviewing the attorney's conduct after the donor has become mentally incompetent.

The Report recommends that an EPA be in writing and signed by or under the direction of the donor (by someone other than the attorney, witness or their spouses), and witnessed by a lawyer. The EPA would state either that it is to

continue notwithstanding the donor's later mental incapacity or infirmity, or that it is to take effect upon the donor's mental incapacity or infirmity. It would be accompanied by a certificate of legal advice signed by the lawyer who witnessed the EPA, which would state that the lawyer was satisfied that the donor appeared competent to grant the EPA, and understood the explanatory notes which would be included in the text of every EPA.

These formalities of execution are necessary to protect the interests of the donor, and the Report recommends that the donor should not be able to waive compliance with them.

The Report also recommends that an EPA is void if, at the date of its execution, the donor is incapable of understanding its nature and effect. A number of other safeguards were considered, including a minimum age for the donor, restrictions on who can be appointed as an attorney, mandatory joint attorneys, limitations on the value of the estate, and limitations on the duration of the EPA. It was decided that these safeguards would undesirably restrict the freedom of donors and would give rise to other problems.

Powers and Duties of the Attorney

The nature of an attorney's duties is well established in the common law. As with all agents, an attorney has a duty to exercise reasonable care when acting under the power of attorney. Attorneys also have a duty of loyalty and utmost good faith. They must keep their own property separate from the donor's, and must keep accurate accounts of all transactions entered into on the donor's behalf. They cannot delegate their authority without the consent of the donor.

Given that the nature and extent of an attorney's duties are already so well established in law, it is unnecessary to incorporate all of them into the proposed legislation. However, it is recommended that the duty to act and the duty to account be incorporated into the legislation.

At common law, an attorney does not have to exercise the authority conferred by the power of attorney unless he or she undertakes by contract to do so. The Report recommends that, upon the donor's incapacity, attorneys be required to exercise their powers with reasonable diligence to protect the interests

of the donor. The duty should not be imposed unless the attorney has accepted the appointment as attorney by signing or acknowledging the EPA or by acting in pursuance of the EPA.

The attorney's common law duty to account to the donor is meaningless if the donor lacks the mental capacity either to make an informed decision whether to request the accounts, to understand them, or to revoke the power of attorney if the accounts indicate mismanagement. It is recommended that the court have the power, on the application of any interested party, to direct that the attorney provide an account of transactions entered into on behalf of the donor. The application could be brought only after the donor's incapacity, and notice would have to be served on the donor and the Public Trustee. The legislation would not allow a donor to waive the provisions for an accounting.

Presently, attorneys cannot use their powers to benefit anyone other than the donor, without the donor's informed consent. Lacking this power, an EPA would lose much of its potential usefulness. The Report recommends that, in the absence of limitations contained in the instrument creating the power, an attorney should be able to provide for the maintenance, education, benefit and advancement of the donor's spouse and dependent children. The proposed legislation makes it clear that attorneys may benefit themselves if they fall in the class of specified dependents.

Springing Powers

Ordinarily, an EPA confers immediate authority on the attorney. Sometimes this may reflect the needs of the donor, who (though having the mental capacity to grant a valid EPA) may be having difficulty managing his or her own affairs. Other donors will require a mechanism for postponing the attorney's authority until it is needed. Such EPAs, which take effect only upon the occurrence of a named contingency, are called "springing powers of attorney".

The Report recommends that the legislation should allow the donor to specify any contingency, including but not limited to mental incapacity or infirmity, upon which the EPA will take effect. Donors could specify a person (who could be anyone, including the attorney) who would conclusively determine when the contingency had occurred. The legislation should contain a default provision for EPAs which are contingent on the mental incapacity of the donor: if

the power fails to name a person, or if the named person dies before it takes effect, the contingency should be deemed to have occurred upon the written declaration of two medical practitioners.

Termination

There is some evidence in other provinces that EPA donors often do not understand that they can revoke the power at any time before incapacity. The proposed legislation would contain an express provision that an EPA terminated if it is revoked by the donor, provided that the donor has the necessary mental capacity. The court would also have the power to terminate the EPA if it considers this to be in the best interests of the donor. This revocation by the court is one of the most fundamental and necessary safeguards which ought to be included in EPA legislation.

The application would be made to the Surrogate Court by the donor, any interested person, and any other person with leave of the court. Notice of the application would be served on the donor, the attorney, and the public trustee. The termination application is a quick and simple procedure, and is best suited to emergency situations, where the removal of the attorney is immediately necessary to protect the donor's interests.

The Report also makes recommendations relating to termination upon a trusteeship order being granted under the Dependent Adults Act, upon the death of the donor or the death or incapacity of the attorney (of the last remaining attorney, where joint or alternate attorneys were appointed), and upon the attorney's renunciation of the EPA. If the attorney is under a duty to act (as discussed above), he or she would not be able to renounce without leave of the court. A physicians' certificate of incapacity in respect of an EPA donor would be of no effect, but the Public Trustee could manage the estate until notified of the EPA.

For the protection of the donor, the statutory provisions relating to termination would apply notwithstanding any agreement or waiver to the contrary.

Protection of Attorneys and Third Persons

At common law, attorneys who act in good faith, without knowledge of the donor's incapacity, are held personally liable to the parties with whom they deal, because the incapacity terminates the attorneys' authority. They are liable even though the rights of these third parties are unaffected by the donor's incapacity. This rule is unfair and of questionable validity.

With EPA legislation, the donor's mental incapacity will not terminate the attorney's authority. However, the possibility of personal liability remains in cases where the power of attorney is not an enduring one. It is recommended that the proposed legislation provide that an attorney shall not incur any liability for having acted upon a power of attorney which had been terminated, if the attorney did not know, and with reasonable care would not have known, of the termination. The legislation should also provide that the attorney's act is valid and binding in favour of any person who did not know of the termination of the attorney's authority.

Research Papers

Report on Referees
(Research Paper No. 18, February 1990)

Introduction

In England, referees try all exceptionally lengthy, complicated or technical civil cases. Ontario (with legislation similar to Alberta's) makes extensive use of referees to hear builders' lien and other matters, and in family law. Referees are used, although less widely, in British Columbia, Manitoba and Saskatchewan. Although Alberta law permits the use of referees for a variety of court proceedings, they are very seldom used in this province.

The Alberta Law Reform Institute has asked Justice J.A. Côté to investigate whether the referee process could, and should, be used more often in Alberta.

The Alberta Law

In general, Alberta law says that any question of fact may be sent to a referee. The referee considers the evidence and reports back to the judge, who will decide whether to accept the report. If the report is accepted, it becomes the final judgment of the court.

(a) Who may be a referee?

Under Alberta Rules, all Masters in Chambers, clerks and deputy clerks of the court are official referees. Under the *Court of Queen's Bench Act*, Masters in Chambers are official referees, while clerks and deputy clerks may act as referees when required. The Lieutenant Governor in Council may name other referees, either on a standing basis or ad hoc. The court may direct an inquiry or account. It is not clear whether this may be to a referee other than to an official referee, although the *Administration of Estates Act* allows the Queen's Bench or Surrogate Court to appoint "an accountant or other skilled person" to assist the court in auditing complicated estate accounts. The Court of Appeal has referred to someone to be chosen by agreement of the parties or to be named by the court to determine damages.

(b) What work may they do?

Alberta statutes and Rules say little about what inquiries or accounts may be performed by referees (except in section 48(3)). Among the matters a judge could ask a referee to do, are:

- sorting out complicated accounts in a mortgage or partnership case; or
- investigating deficiencies or delays, and resulting damages in a construction case; or
- investigating and reporting on the damages in a personal injury suit; or
- investigating the worth of loss of a going business; or
- determining whether a vendor can make good title; or
- looking into the means and needs of a spouse seeking maintenance; or
- computing the lien fund and precise entitlement in a builders' lien action.

(c) How may they do their work?

The Alberta Rules are not very specific about the procedures to be followed by referees, which allows them to select the most suitable procedure in each case. Proceedings before a referee are to be conducted in much the same manner as those before a judge, while the referee is allowed to get advice or directions from the court on a point of law. Under both general Rules and the Surrogate Rules the referee is to report to the court, which may confirm or vary the report, send it back to the referee, ask for explanations or may decide the question itself. Other Rules and the case law have established the final decision of the referee takes the form of a recommendation or report to the court, which will be accepted (and binding on the parties) unless a good reason is found to set it aside. Acceptance by the court produces a final judgment.

Advantages of Using Referees

Referees can be used in matters involving little dispute of law, or principle, or credibility, for small lawsuits or small fact issues of relatively little value, allowing judges to concentrate on work they alone may do.

The use of referees has great potential for improving the efficiency of the administration of justice. As in other jurisdictions, referees free the time of judges by taking on lengthy cases involving the review of many transactions. The use of referees allows greater freedom to schedule cases that involve frequent adjournments or extend for many weeks. This flexibility should help to eliminate backlogs and delays in the court.

Expertise is the other compelling reason for the use of referees. Using the same referee for similar types of cases (builders' liens, for example) has obvious advantages in allowing individuals to build expertise in one area. While there is little precedent for using referees with technical backgrounds, accountants are widely used in other jurisdictions. For particular types of cases, the court may refer to accountants with experience in valuation, receiverships, or forensic accounting.

The Institute proposes a pilot project to experiment with using referees with technical qualifications (in engineering or medicine as well as accounting) to hear cases in their own fields.

Cost saving is further reason for expanding the use of referees. Referees with expertise, whether from their professional background or from familiarity with the type of action, may be able to save time, and therefore, costs.

While the report considered several possible disadvantages to the expanded use of references in Alberta, none was seen as a significant barrier to expanding the use of referees. Some parties may expect their case to be heard by a judge. Constitutional objections under Section 96 of the constitution are not likely to be upheld; the referee only investigates and reports, while the court makes the actual judgment.

Legislative Change

Only one legislative change will be needed to permit more extensive use of referees in Alberta. Even if the parties agree on a certain individual as referee and are willing to pay his fees, it takes an Order in Council to name him as an official referee, unless he is a clerk or Master. A Rule of Court is needed to say a reference or accounting may be to an official referee or to anyone else agreed on by the parties.

Conclusion

The report concludes that there is merit in wider use of referees by the court in Alberta and recommends the legislative change necessary to allow the court to refer without Order in Council. A pilot project should be conducted on the use of technically trained referees.

WORK IN PROGRESS

The Institute tries to maintain a balance between the different types of report which it produces and the stages of particular projects. Each year should contain a mix of research, tentative recommendations, and final recommendations. A review of the work in progress during this year will indicate that mix.

Final Reports

Creditors Rights

We have labored for some time with this project, which can only be described as a mega project. Each of the chapter headings in itself would constitute a substantial project. The challenge to the Institute in overhauling the whole system of enforcement of judgments, while maintaining a balance between the interests of the creditor, the debtor and the efficient operation of the system has been a difficult one. This project has already been the subject of a major Report for Discussion and a final report in the area of Prejudgment Remedies. It occupied the attention of the Board on six different occasions during the year in question and represented a major commitment of Board time and Institute personnel. The introduction of the Personal Property Security Act during the course of this project necessitated a re-examination of some of the recommendations and a review of the compatibility of our proposals with that of the Personal Property Security Act. The final report will cover the following areas:

Chapter 1	-	Introduction
Chapter 2	-	The Writ of Enforcement
Chapter 3	-	Discovering the Debtor's Assets
Chapter 4	-	Seizure - General Process
Chapter 5	-	Seizure - Specific Contexts
Chapter 6	-	Enforcement Against Land
Chapter 7	-	Garnishment
Chapter 8	-	Court Ordered Enforcement
Chapter 9	-	Exemptions From Enforcement
Chapter 10	-	Distribution of Enforcement Proceeds
Chapter 11	-	Compensation for Loss Suffered in the Course of Enforcement Proceedings

In addition, the report will include a model Enforcement of Money Judgments Act as well as substantial annotations to the proposed legislation. It is expected that by mid-summer to early fall of 1990 the report will be distributed, along with summaries, charts and other materials which will make the total report as digestible as possible. In addition, the Institute will be following up the recommendations and making itself available to explain the proposals to various interest groups.

Both Brian Burrows and Richard Bowes have worked primarily on this project for the last two years. Their work in bringing the project to close to completion and their ability to keep such a massive area in perspective has been of tremendous assistance to the Board in its deliberations.

Canada Pension Plan Benefits

This project started as one of several small projects which the Institute adopted. The others were Bulk Sales and Section 16 of the Matrimonial Property Act.

Extensive consultation with the Family Law Bar indicated considerable confusion as to the position of Canada Pension Plan benefits on marriage breakdown. The federal legislation allows the provinces to enact legislation which would opt out of the mandatory credit splitting provided for by the federal scheme. Alberta has not enacted specific opting out legislation but does have the provisions of the Matrimonial Property Act which in a general way, allow parties to divide their marital assets. It appears almost to be a convention that the non-contributing spouse will waive Canada Pension Plan benefits, often for little or nothing in return. The propriety of such an arrangement and the mechanics of it are both open to question. The balance which the report must reach is to bring the division of Canada Pension Plan benefits within the general matrimonial property scheme, while at the same time respecting the particular aspects of the Canada Pension Plan scheme.

We expect this report by mid-summer.

Reports for Discussion

Canadian Depository for Securities

The Director, Professor Peter Lown has carriage of this report. The major policy review of this area was completed by the Board at its June meeting of 1989. The matter now awaits the review of two agreements which are being negotiated among the various regulatory agencies which will regulate the operations of the Canadian Depository for Securities. Those agreements form an integral part of the regulatory environment within which the Depository would operate and which would complement any necessary changes in the definitions of issue and delivery of corporate securities. The Institute will be in a position to issue its recommendations as soon as those agreements are negotiated and are available for review.

Mortgage Remedies

The progress of this report was slowed somewhat by the necessity to reassign responsibility for the project after Professor Hammond returned to New Zealand. Ms. Janice Henderson-Lypkie has now undertaken this project as her major focus, after completion of her work in the area of Section 42 of the Business Corporations Act and Section 16 of the Matrimonial Property Act. Considerable consultation had already taken place with representatives of both the legal and banking professions. It is expected that a report making proposals for simplifying and fine tuning the exercise of mortgage remedies will be available by the end of 1990.

Land Titles

The Institute has been counsel, draftsman and chairperson to a joint committee, representing seven provinces and two territories, to examine the possibility of preparing a draft model Act on Land Titles. It is clear that the operation of the land titles system in various provinces has departed somewhat from the model which was originally adopted and it is also clear that the courts have had to interpret the legislation, somewhat tortuously at times, in order to allow the statutory provisions to meet the requirements of business efficacy.

The purpose of this project is to analyze, rationalize and simplify the system so as to ensure that it meets the requirements of users of the land titles process. Professor Tom Mapp was heavily involved in this project before his retirement and has continued to work as a consultant to Mr. W.H. Hurlburt, Q.C. who has taken on responsibility for this project. Several meetings of representatives of the various jurisdictions have been held and it is hoped that a joint report will be available for publication by mid summer of 1990. The Institute will then issue a report commenting on the joint report.

Section 14 of the Interpretation Act

The Institute undertook to review the operation of Section 14 of the Interpretation Act in the light of recent jurisprudence which had almost emasculated the effect of that section. In other jurisdictions the equivalent provisions of Section 14 had been reversed, apparently without incident. While the Institute favored this possibility, it cannot be done without a thorough review of the circumstances in which the effect of statutes on the Crown ought to be treated in accordance with the presumptions set out in Section 14. That review will take some time and detailed work, but it is essential to the cogency of any recommendations which might argue in favor of a reversal of the presumption that statutes do not bind the Crown unless expressly intended to do so.

Feasibility Studies

Before accepting a topic as an approved project, Institute Counsel will prepare a feasibility study which, among other things, examines the issues which must be researched and the methodology to be used. This feasibility study plays an important role in fine tuning the issues and in allowing the Institute to match the personnel and resources to the approved project.

The Institute has approved feasibility studies in three areas. At the request of the Minister of Consumer and Corporate Affairs, Mr. Rick Bowes has been examining the topic of cost of credit. Current legislation provides a particular method by which the costs of credit is to be described to the borrower or consumer of credit. There is some question whether this method is meaningful to either borrower or lender. There is also clearly a need for a uniform approach across the country. As part of the feasibility study, the Institute has reviewed the statutory provisions and relevant jurisprudence and prepared an issues list which has been tentatively approved by the Institute.

Mr. Gordon Wright, Q.C., M.L.A. has suggested a project dealing with unfair contract terms. The Institute feasibility project will review the operation of the English statute on this topic. In addition, it will review the current eclectic provisions of Alberta provincial statutes as well as the powers exercised by the Courts at common law to deal with what are alleged to be unfair contractual terms. It is expected that this proposal will be reviewed by the Project Selection Committee in early fall.

Several suggestions have been received advocating study of the procedures of the various administrative tribunals which exist in the province. It has been suggested that there is a lack of uniformity among these tribunals to the procedures under which they operate and that it would be worthwhile providing either a standard set of procedures and/or a supervisory body which would review these procedures. There are various models available for this review, each of which is being studied at the present time. In addition, the very extensive jurisprudence dealing with procedural matters is being reduced to a manageable proportion for review and a feasibility study.

Special Projects

The Institute has under way four special projects, one by way of the secondment arrangement which the Institute has with the Faculty of Law of the University of Alberta, and the other three because of special funding provided by the Alberta Law Foundation.

Crown Liability

The Ontario Law Reform Commission was in the process of producing a report on Crown Liability and it was the intention of the Institute, rather than duplicate the Ontario work, to review the Ontario report with a view to endorsing or supporting its conclusions. The Ontario report was not available as quickly as had been expected, and Professor Law commenced preparation of what was essentially an Issues Paper in this topic area. The Ontario report subsequently became available to us and a combination of the two studies will provide a comprehensive review of the Ontario proposals in a comprehensively described context. We expect this Issues Paper to be available in late fall.

Surrogate Rules

The Institute has a cooperative project with the provincial Surrogate Rules Committee to review and propose amendments to the current surrogate rules. The rules governing estate administration have not been the subject of a comprehensive review and suffer from several problems. The rules are incomplete, combine both substantive and procedural provisions, overlap with other legislation, and in many respects are outdated. Ms. Anne de Villars is the principal researcher on this topic which is expected to be complete by the end of 1990.

Provincial Family Law Legislation

Several Institute projects have suggested changes in provincial family law legislation. Our projects on maintenance, status of children and cohabitation have all suggested such amendments. We received numerous suggestions to the effect that the whole of the Domestic Relations Act was in need of review. With the assistance of the Alberta Law Foundation, and with Professor Christine Davies as principal researcher, this project has been approved. A project description has been approved by the Project Selection Committee and work will commence in mid-1990.

Personal Decision Making

Our report on Enduring Powers of Attorney concentrated on the role of a substitute decision maker for financial and property matters. In phase 2 of that project we intend to examine the possibility of a substitute decision making process for non-financial matters. Essentially the major area is the case of medical treatment. There are several possibilities including the use of living wills, the extension of the enduring power of attorney model to medical matters, among others. This work will commence more fully in mid-1990 and we expect to have completed the work early in 1991.

SIGNIFICANT ISSUES

The work of the Institute has proceeded apace during the year under review. Board membership and counsel positions have remained unchanged. Slight changes in operating procedures have been accommodated by both Board members and staff and it would be accurate to describe the monthly meetings as comfortable and confident in the work which is being produced.

That is not to say, however, that the Institute is devoid of any concern for its operations and future. Indeed, there are such concerns and they centre around three areas.

Implementation of Recommendations

Past Annual Reports have referred to the lack of implementation of Institute recommendations as an item of particular concern. Indeed, this very topic was the subject of a full and frank report to the Benchers of the Law Society and of a meeting with the Attorney General and his senior staff in September. For that meeting, the background materials catalogued the implementation of Institute recommendations over various time frames, and set out the consequences of a continued poor implementation record.

The unique creation of the Institute, as a creature of contract rather than as a statutorily created commission allows the Institute to maintain its objectivity, independence, and, hopefully, credibility. On the other hand, the Institute does not expect that its recommendations should be accepted without critical review and without having to pass through the process which any other legislative recommendations must meet. The frank exchange of the September meeting has had two significant benefits. It highlights the necessity for a closer liaison in project planning and planning for the legislative calendar between the Institute and the Attorney General's Department. Cooperative planning on that level is beneficial. It has also led to the possibility of an all party review of Institute recommendations which may serve the purpose of clearing the ground for the legislative process.

During the past year the Institute has gone to some lengths to ensure that its reports are made known and available to as broad a community as possible. Particularly within the legal profession, the use of Executive Summaries and presentations to interest groups have gone a long way to reinforcing the profile of

the Institute. On the other hand, there is a fine line between providing information where appropriate and making the existence of the proposals known to the community on the one hand, and lobbying on the other hand. To cross that line into the lobbying arena could sacrifice the credibility and objectivity which the Institute has worked so hard to build up. That concern is in the forefront of the Board's deliberations.

Institute Financial Planning

The Institute must keep a keen eye on the cost of its operations. It has attempted to do so by frugal and prudent fiscal management, and that will continue. Normally, the Institute's budget is split between the founding parties in the proportions set out in the founding agreement. From time to time there have been variations on this proportion when one or other of the founding parties was under financial pressure. For the last four years it is the Law Society through the Law Foundation which has provided slightly more than its proportionate share while the provincial government has contributed less than its proportionate share. There is concern that this not become a trend and that it not impact negatively on the ability of the Institute to plan appropriately for its activities. Annual fluctuations in contribution make it difficult to plan for project work which normally spans a two to two and half year time frame.

Relations With Other Law Reform Agencies

The Institute has also been gratified by the fact that the Manitoba Law Reform Commission has been re-established on a stronger footing than had previously been the case. The Institute was concerned by the possibility of the Manitoba Commission being allowed to perish. It has joined with other law reform commissions in an attempt to provide a stronger voice throughout the country and to bring the law reform commissions together in a cooperative umbrella organization. This should lead to the greater sharing of information and research, and for better planning of projects to avoid duplication of research effort. The Institute, through its Director will be playing a leading role in this endeavor.

M.B. BIELBY

C.W. DALTON

A.D. HUNTER

H.J.L. IRWIN

P.J.M. LOWN

B.L. RAWLINS

C.G. WATKINS

E.E. DAIS

J.L. FOSTER

W.H. HURLBURT

D.P. JONES

J.P. MEEKISON

A.C.L. SIMS

H. WINEBERG

CHAIRMAN

DIRECTOR

March 1990

APPENDIX A

LIST OF BOARD MEMBERS

Present Members

M.B. Bielby, Q.C.
Member at large - June 1986 to present

E.E. Dais
University of Calgary Faculty of Law nominee - November 1988 to present

C.W. Dalton
Attorney General's nominee - March 1984 to present

J.L. Foster, Q.C.
Member at large - April 1987 to present

Alan D. Hunter, Q.C.
Law Society nominee - October 1988 to present
Chairman - March 1989 to present

W.H. Hurlburt, Q.C.
Law Society nominee - November 1967 to January 1970
Member at large - February 1970 to January 1971
Law Society nominee and Chairman - February 1971 to December 1973
Member at large and Associate Director - January 1974 to August 1975
Director - September 1975 to March 31, 1986
Attorney General's nominee - October 1986 to present

H.J.L. Irwin
Member at large - June 1986 to present

D.P. Jones, Q.C.
University of Alberta Faculty of Law nominee - October 1986 to present

P.J.M. Lown

University of Alberta Faculty of Law nominee - January 1983 to February 1983

Director - April 1988 to present

J.P. Meekison

University of Alberta nominee (Vice-President (Academic)) August 1985 to present

Hon. Madam Justice B.L. Rawlins

Member at large - June 1986 to present

A.C.L. Sims

Member at large - June 1986 to present

C.G. Watkins

Member at large - March 1986 to present

H.W. Wineberg

Attorney General's nominee - September 1990 to present

Former Members

G.W. Acorn, Q.C.

Attorney General's nominee - November 1967 to January 1969

D. Trevor Anderson

University of Alberta Faculty of Law nominee - November 1967 to June 1971

J.W. Beames, Q.C. (deceased)

Member at large - August 1979 to March 1986

Law Society nominee and Chairman - March 1986 to July 1988

W.F. Bowker, Q.C., Director Emeritus

Director - January 1968 to August 1975

Member at large - September 1975 to December 1984

Margaret Donnelly
Attorney General's nominee - June 1976 to February 1979

C.R.B. Dunlop
University of Alberta Faculty of Law nominee - September 1981 to December 1982

G.C. Field, Q.C.
Member at large - April 1981 to May 1986

H.G. Field, Q.C.
Law Society nominee and Chairman - November 1967 to February 1971

R.P. Fraser, Q.C.
Member at large - June 1970 to January 1976
Law Society nominee - January 1976 to February 1979

Dean G.H.L. Fridman
Member at large (University of Alberta Faculty of Law) - February 1971 to June 1975

S.A. Friedman, Q.C.
Attorney General's nominee - November 1967 to November 1970

E.J.F. Gamache, Q.C. (deceased)
Attorney General's nominee - February 1979 to February 1984

R.G. Hammond
Member at large - March 1985 to March 1986
Director - April 1986 to March 1988

J.E. Hart, Q.C.
Attorney General's nominee - November 1967 to January 1969

Wm. Henkel, Q.C.
Attorney General's nominee - December 1970 to June 1976

R.G. Hopp

University of Alberta Faculty of Law nominee - August 1979 to September 1981

Dr. M. Horowitz

University of Alberta nominee (Vice-President (Academic)) - July 1975 to July 1979

Constance D. Hunt

Member at large (University of Calgary Faculty of Law) - July 1980 to June 1981

Dr. Henry Kreisel

University of Alberta nominee - (Vice-President (Academic)) - September 1970 to June 1975

F.A. Laux

University of Alberta Faculty of Law nominee - September 1972 to May 1976

L.C. Leitch

University of Alberta nominee (Vice-President (Finance and Administration)) - February 1980 to August 1985

J.C. Levy

University of Calgary Faculty of Law nominee - December 1981 to October 1988

Dr. A.G. McCalla (deceased)

University of Alberta nominee (Vice-President (Academic)) - November 1969 to May 1970

Dean J.P.S. McLaren

Member at large (University of Calgary Faculty of Law) - January 1976 to June 1980

T.W. Mapp

Member at large - April 1981 to May 1986

Hon. Mr. Justice D.B. Mason
Member at large - February 1979 to September 1985, and March 1986 to March 1989

Robert R. Neve (deceased)
Member at large - April 1970 to May 1970

R.S. Nozick
University of Alberta Faculty of Law nominee - March 1983 to May 1986

J.S. Palmer
Law Society nominee - November 1967 to February 1970

R.M. Paton (deceased)
Attorney General's nominee - May 1982 to June 1985

Julien D. Payne
University of Alberta Faculty of Law nominee - July 1971 to June 1972

Ellen Picard
Member at large - June 1975 to December 1975
University of Alberta Faculty of Law nominee - May 1976 to July 1979

Margaret A. Shone
Member at large - May 1985 to May 1986

Justice W.A. Stevenson
University of Alberta Faculty of Law nominee - August 1969 to January 1970
Member at large - February 1970 to December 1973
Law Society nominee and Chairman - January 1974 to January 1976
Member at large and Chairman - January 1976 to July 1979

Dr. A.R. Thompson
University of Alberta Faculty of Law nominee - November 1967 to June 1969

W.E. Wilson, Q.C.

Law Society nominee - June 1976 to March 1986
Chairman - September 1979 to March 1986

Dr. Max Wyman

University of Alberta nominee (Vice-President (Academic)) - November 1967 to March 1969

APPENDIX B

RECORD OF LEGISLATION BASED ON INSTITUTE'S RECOMMENDATIONS

Formal Report - Number and Title		Legislation
No. 1	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, R.S.A. 1970, c. 75 (now R.S.A. 1980, c. C-33, am. by S.A. 1982, c. 14)
No. 2	Powers of Personal Representatives to Grant Options (June 1969)	Wills Act, R.S.A. 1970, c. 393, s. 30 (now R.S.A. 1980, c. W-11, s. 30) Devolution of Real Property Act, R.S.A. 1970, c. 109, s. 13 (now R.S.A. 1980, c. D-34, s. 12)
No. 3	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 1980, c. O-3)
No. 4	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 1980, c. A-4)
No. 5	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 1980, c. G-12) accepted. Recommendations for incidental amendments not acted upon.
No. 6	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 1980, c. P-4)

No. 7	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71
No. 8	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now R.S.A. 1980, c. W-1)
No. 9	Rule in *Saunders v. Vautier* (February 1972)	S.A. 1973, c. 13, s. 12 amending the Trustee Act, R.S.A. 1970, c. 373, s. 37 (now R.S.A. 1980, c. T-10, s. 42)
No. 10	Powers of Maintenance and Advancement (June 1972)	S.A. 1974, c. 65, s. 9 amending the Trustee Act, R.S.A. 1970, c. 373, ss. 31-33 (now R.S.A. 1980, c. T-10, ss. 32, 34, 35, 36(3), 37)
No. 11	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 amended 1975, c. 5 (2 sess.) (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 10-13; Land Titles Act, R.S.A. 1980, c. L-5, ss. 71, 72, 119)
No. 12	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 1980, c. E-16)
No. 13	Judicature Act, Section 24 (August 1974)	S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193
No. 14	Minors' Contracts (January 1975)	
No. 15	Validity of Rules of Court (December 1974)	S.A. 1976, c. 58, s. 6(4) amending the Judicature Act, R.S.A. 1970, c. 193, s. 39 (now R.S.A. 1980, c. J-1, s. 47)

No. 16	Rule in *Hollington v. Hewthorn* (February 1975)	S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act, R.S.A. 1970, c. 127, s. 27 (now R.S.A. 1980, c. A-21, s. 27)
No. 17	Small Projects (June 1975)	S.A. 1976, c. 55, s. 2 amending the Workers' Compensation Act, S.A. 1973, c. 87, s. 15 (now R.S.A. 1980, c. W-15, s. 15); S.A. 1976, c. 58, s. 3 amending the Bulk Sales Act, R.S.A. 1970, c. 37 (now R.S.A. 1980, c. B-13, ss. 1(f), (j), 4(2), 6(b), 7, 14)
No. 18	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 1980, c. M-9), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home
No. 19	Consent of Minors to Health Care (December 1975)	
No. 20	Status of Children (June 1976)	
No. 21	Purchase by a Company of Shares Which It Has Issues (January 1977)	S.A. 1977, c. 13, s. 2 amending the Companies Act, R.S.A. 1970, c. 60, s. 41 (reenacted as R.S.A. 1980, c. C-20, ss. 42-49, 51-54, then superseded by S.A. 1981, c. B-15, ss. 32 and 33: see Report No. 36)

No. 22	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now R.S.A. 1980, c. L-6), based in large part on our recommendations
No. 23	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 14-19, 20-34)
No. 24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 1980, c. S-30; Fatal Accidents Act R.S.A. 1980, c. F-5, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 1980, c. L-5, s. 53)
No. 25	Family Law Administration: the Unified Family Court (April 1978)	
No. 26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

No. 27	Matrimonial Support (March 1978)	S.A. 1977, c. 64 amending Part 4 of the Domestic Relations Act, R.S.A. 1970, c. 113 (now covered by the Maintenance Enforcement Act, S.A. 1985, c. M-0.5, establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); S.A. 1977, c. 92 amending the Social Development Act, R.S.A. 1970, c. 345 (now R.S.A. 1980, c. S-16, ss. 14, 15); S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act, R.S.A. 1970, c. 86 (now R.S.A. 1980, c. D-5, ss. 3(2), 3(3), 4(e)-(f), (6) (Our proposals for change in the substantive law have not yet been implemented.)
No. 28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5
No. 29	Family Relief (June 1978)	
No. 30	The Builders' Lien Act: Certain Specific Problems (March 1979)	S.A. 1985, c. 14 amending the Builders' Lien Act, R.S.A. 1980, c. B-12
No. 31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	

No. 32	Guest Passenger legislation (April 1979)	Proclamation 5 July 1979 of previously enacted S.A. 1977, c. 76, s. 6 to come into force 1 September 1979 (now Insurance Act, R.S.A. 1980, c. I-5, s. 310) (This is not the principal recommendation of the Report.)
No. 33	Inter-Spousal Tort Immunity (April 1979)	
No. 34	Service of Documents During Postal Interruptions (June 1979)	S.A. 1980, c. 88 (now Judicature Act, R.S.A. 1980, c. J-1, ss. 33-37)
No. 35	Defamation: Fair Comment and Letters to the Editor (October 1979)	S.A. 1980, c. 11 amending the Defamation Act, R.S.A. 1970, c. 87 (now R.S.A. 1980, c. D-6, s. 9)
No. 36	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15
No. 37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
No. 37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
No. 38	The Uniform Sale of Goods Act (October 1982)	
No. 39	Defences to Provincial Charges (March 1984)	

No. 40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17
No. 41	Compensation for Security Interests in Expropriated Land (May 1984)	
No. 42	Debt Collection Practices (June 1984)	
No. 43	Protection of Children's Interests in Custody Disputes (October 1984)	
No. 44	Statute of Frauds (June 1985)	
No. 45	Status of Children: Revised Report, 1985 (November 1985)	
No. 46	Trade Secrets (July 1986)	Draft statute adopted by Uniform Law Conference of Canada, Victoria, B.C., August 1987
No. 47	Survivorship (August 1986)	
No. 48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
No. 49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987

No. 50 Prejudgment Remedies for Unsecured Claimants (February 1988)

No. 51 Proposals for a New Alberta Arbitration Act (October 1988)

No. 52 Competence and Human Reproduction (February 1989)

No. 53 Towards Reform of the Law Relating to Cohabitation Outside Marriage (June 1989)

No. 54 Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1989)

No. 55 Limitations (December 1989)

No. 56 The Bulk Sales Act (January 1990)

No. 57 Section 16 of the Matrimonial Property Act (March 1990)

APPENDIX C

OTHER PUBLICATIONS

Annual Reports

Five Year Report 1968-1973

Annual Reports 1973-1974 to 1987-1989 inclusive

Reports for Discussion

No. 1	Protection of Trade Secrets (February 1984)
No. 2	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)
No. 3	Remedies of Unsecured Creditors (May 1986)
No. 4	Limitations (September 1986)
No. 5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)
No. 6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)
No. 7	Enduring Powers of Attorney (February 1990)

Issues Papers

No. 1	Towards a New Arbitration Act for Alberta (July 1987)
No. 2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)

Research Papers

No. 1	Rent Control; Security of Tenures (November 1975)
No. 2	Entry of Landlord; Locks and Security Devices (November 1975)
No. 3	Obligation to Repair; Security Deposits (November 1975)
No. 4	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)

No. 6	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)
No. 7	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)
No. 8	Mobile Homes (November 1975)
No. 9	Consent of Minors to Medical Treatment (May 1975)
No. 10	Illegitimacy (June 1974)
No. 11	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)
No. 12	Statute of Frauds (May 1979)
No. 13	Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioral and Social Sciences: May 1981)
No. 14	Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)
No. 15	Survey of Adult Living Arrangements: A Technical Report (November 1984)
No. 16	The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)
No. 17	Corporate Directors' Liability (February 1989)
No. 18	Report on Referees (February 1990)

Books

Sir Victor Windeyer, *Some Aspects of Australian Constitutional Law* (1972)

Thomas W. Mapp, *Torrens' Elusive Title: Basic Legal Principles of an Efficient Torrens' System* (1978) (Alta. L.R. Book Series, v. 1)

The Alberta Limitations Manual, Butterworths & Co. (Western Canada) Ltd., 1979. (Although not prepared by the Institute, the Manual was based upon a list of statutory limitation periods in Alberta originally prepared by members of the Institute's legal staff.)

Olive M. Stone, *The Child's Voice in the Court of Law*, Butterworth & Co. (Canada) Ltd., 1982. (Dr. Stone's book is based on work done for the Institute while she was employed full-time as consultant on our Family Law Project).

W.H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada*. Juriliber Limited, 1986.